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U.S. Citizenship
and Immigration
Services

FILE:

Office: SAN FRANCISCO, CALIFORNIA

Date: JUN 03 2004

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 29, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services failed to afford individualized treatment to the applicant's claim of extreme hardship to her U.S. citizen husband. Counsel contends that the applicant does establish extreme hardship to her spouse. *Brief in Support of Appeal*, dated August 26, 2003.

The record contains a declaration of the applicant's spouse, dated June 3, 2003; several letters of support; copies of medical reports for the applicant's spouse; copies of articles, travel advisories and public announcements addressing country conditions in the Philippines and copies of tax and financial statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant made a willful misrepresentation of a material fact upon entry to the United States by presenting a document that did not belong to her.

Counsel asserts that extreme hardship under section 212(i) of the Act should not be defined as narrowly as the parallel standards under sections 212(h) and 244(a)(1) of the Act. *Brief in Support of Appeal* at 2. The assertions of counsel standing alone are not compelling where Congress has established extreme hardship as

the standard of review under each of the indicated sections of law and counsel does not cite precedent or other authority to support his assertion.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The AAO notes that the record makes several references to hardship suffered by the applicant herself. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as all of his immediate family, with whom he has close relationships, reside in the United States. *Brief in Support of Appeal* at 4. Counsel cites the poor economic conditions and general instability in the Philippines as further reasons that the applicant's husband cannot relocate there. *Id.* The applicant's husband states that he cannot afford to lose his job as it provides him with medical insurance. He claims that only "rich people" can afford medical care in the Philippines. *Declaration of Gilbert A. Sicat in Support of Extreme Hardship Waiver of Xenia Q. Sicat A079-632-404*, dated June 3, 2003. The applicant's husband is also fearful of contracting a disease in the Philippines or being targeted by rebels owing to his status as a United States citizen. The AAO notes that counsel's assertions regarding physical threats to the applicant's husband in the Philippines are generalized and do not constitute evidence of a particular threat to his well-being in his native country.

Although counsel offers evidence of extreme hardship to the applicant's husband if he relocates to the Philippines, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States maintaining lucrative employment, access to healthcare and close proximity to other family members. Counsel offers medical records to establish that the applicant's husband suffers emotionally as a result of the applicant's inadmissibility. The AAO notes that the submitted medical records do not provide a diagnosis for the applicant's spouse and they do not evidence a course of treatment or medication for any medical condition. Further, the record does not establish an ongoing relationship between the applicant's spouse and a mental health professional.

Counsel contends that the applicant's husband will suffer financial hardship if the applicant is denied a waiver of inadmissibility to the United States. The applicant's husband states that the applicant shares in paying the

expenses they jointly incur. *Id.* The record fails to establish that the applicant earns an income or contributes financially to the family's expenses. The record does not establish that the applicant's spouse will be unable to provide financially for himself and her child, if the child remains in the United States, in the absence of the applicant. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.